

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 21-908V

UNPUBLISHED

PATRICIA MERRILL,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: April 21, 2023

Special Processing Unit (SPU);
Ruling on Entitlement; Concession;
Table Injury; Influenza (Flu) Vaccine;
Shoulder Injury Related to Vaccine
Administration (SIRVA)

Leigh Finfer, Muller Brazil, LLP, Dresher, PA, for Petitioner.

Sarah Black Rifkin, U.S. Department of Justice, Washington, DC, for Respondent.

RULING ON ENTITLEMENT¹

On February 10, 2021, Patricia Merrill filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) as a result of an influenza (“flu”) vaccine she received on December 2, 2020. Petition at 1. Petitioner further alleges the vaccine was administered within the United States and that there has been no prior award or settlement of a civil action on her behalf as a result of her injury. See Petition at ¶¶ 1, 6-7. The case was assigned to the Special Processing Unit of the Office of Special Masters.

¹ Because this Ruling contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Ruling will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

On April 17, 2023, Respondent filed his Rule 4(c) report in which he concedes that Petitioner is entitled to compensation in this case. Respondent's Rule 4(c) Report at 1. Specifically, Respondent indicates that

[m]edical personnel at DICP have reviewed the petition and medical records filed in the case and concluded that petitioner has satisfied the criteria set forth in the Vaccine Injury Table ("Table") and the Qualifications and Aids to Interpretation ("QAI") for SIRVA. Specifically, petitioner had no history of pain, inflammation, or dysfunction in her left shoulder; her pain and reduced range of motion occurred within forty-eight hours of receipt of an intramuscular vaccination; her symptoms were limited to the shoulder in which the vaccine was administered; and no other condition or abnormality was identified to explain her initial symptoms.

Id. at 5 (citing 42 C.F.R. § 100.3(a), (c)(10)). Respondent further agrees that Petitioner suffered the residual effects of her condition for more than six months and no alternate causes for her injury were identified. *Id.* (citing §§ 11(c)(1)(B)(i)(I), (c)(1)(E); § 16(a)(2)).

In view of Respondent's position and the evidence of record, I find that Petitioner is entitled to compensation.

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master